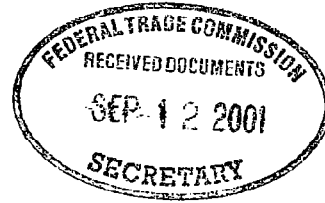


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION



\_\_\_\_\_  
In the Matter of )  
)  
)

Schering-Plough Corporation, )  
a corporation, )  
)

Upsher-Smith Laboratories, Inc., )  
a corporation, )  
)

and )  
)

American Home Products Corporation, )  
a corporation. )  
\_\_\_\_\_)

Docket No. 9297

PUBLIC

**UPSHER-SMITH'S OBJECTIONS AND RESPONSES TO COMPLAINT COUNSEL'S  
SECOND SET OF REQUESTS FOR ADMISSIONS**

---

Pursuant to Federal Trade Commission Rules of Practice §3.32 Upsher-Smith Laboratories, Inc. submits these objections and responses to Complaint Counsel's Second Set of Requests for Admissions to Upsher-Smith. The full text of each request is set forth below in italics, followed by Upsher-Smith's objections and responses. Provision of a response to any request shall not constitute a waiver of any applicable objection, privilege, or other right.

**REQUESTS FOR ADMISSIONS**

*Request No. 1: In 1997, Ian Troup was President and Chief Operating Officer of Upsher-Smith.*

**ANSWER:** Admitted.

*Request No. 2: In 1997, Raman Kapur was President of Worldwide Generics for Schering.*

**ANSWER:** Upsher-Smith objects to this Request because the information is necessarily beyond its knowledge. Subject to this objection, Upsher-Smith admits this Request.

*Request No. 3: In 1997, Martin Driscoll was Vice President of Marketing and Sales of the Key Pharmaceuticals Business Unit of Schering Laboratories, and Schering Laboratories was a division of Schering-Plough Pharmaceuticals.*

**ANSWER:** Upsher-Smith objects to this Request because the information is necessarily beyond its knowledge. Subject to this objection, Upsher-Smith admits this Request.

*Request No. 4: The first meeting that occurred in 1997 and during which representatives of Schering and Upsher-Smith discussed the possibility of settling the Schering/Upsher-Smith patent litigation was between Ian Troup and Martin Driscoll.*

**ANSWER:** Upsher-Smith objects to and denies this Request because the term “meeting” and “representatives” have not been defined, are vague and ambiguous and can have various meanings. Upsher-Smith admits only that Ian Troup and Martin Driscoll discussed the possibility of settling the Scheing/Upsher-Smith patent litigation in 1997.

*Request No. 5: The first meeting between Ian Troup and Martin Driscoll during which they discussed the possibility of settling the Schering/Upsher-Smith patent litigation was held in Mr. Driscoll's office in the spring of 1997.*

**ANSWER:** Upsher-Smith objects to and denies this Request because the term “meeting” has not been defined, and is vague and ambiguous and can have various meanings. Upsher-Smith admits only that Ian Troup and Martin Driscoll discussed, among other things, the possibility of settling the Scheing/Upsher-Smith patent litigation in the spring of 1997.

*Request No. 6: The first meeting between Ian Troup and Martin Driscoll during which they discussed the possibility of settling the Schering/Upsher-Smith patent litigation was held in Mr. Driscoll's office on May 21, 1997.*

**ANSWER:** Upsher-Smith objects to and denies this Request because the term “meeting” has not been defined, and is vague and ambiguous and can have various meanings. Upsher-Smith admits only that Ian Troup and Martin Driscoll discussed, among other things, the possibility of settling the Scheing/Upsher-Smith patent litigation in Mr. Driscoll’s office on May 21, 1997.

*Request No. 7: On May 28, 1997, representatives of Schering and Upsher-Smith met at Upsher-Smith's offices in Plymouth, Minnesota.*

**ANSWER:** Admitted.

*Request No. 8:*

**ANSWER:**

*Request No. 9: Martin Driscoll, Raman Kapur, Ian Troup and Andrew Hirschberg were present at a May 28, 1997, meeting at Upsher-Smith's offices in Plymouth, Minnesota.*

**ANSWER:** Upsher-Smith admits that Martin Driscoll, Raman Kapur, and Ian Troup were present at a May 28, 1997 meeting in Upsher-Smith’s offices in Plymouth, Minnesota. Upsher-Smith at this time can neither admit nor deny whether Mr. Hirschberg attended the meeting in May 28, 1997, and therefore denies this portion of the request.

*Request No. 10: At a May 28, 1997, meeting at Upsher-Smith's offices in Plymouth, Minnesota, the settlement of the Schering/Upsher-Smith patent litigation was discussed.*

**ANSWER:** Upsher-Smith admits that the Schering/Upsher-Smith patent litigation, among other things, was discussed at a May 28, 1997 meeting.

*Request No. 11: On June 3, 1997, representatives of Schering and Upsher-Smith met at Upsher-Smith's offices in Plymouth, Minnesota.*

**ANSWER:** Admitted.

*Request No. 12: Martin Driscoll, Raman Kapur, Ian Troup and Andrew Hirschberg were present at a June 3, 1997, meeting at Upsher-Smith's offices in Plymouth, Minnesota.*

**ANSWER:** Upsher-Smith admits that Martin Driscoll, Raman Kapur, and Ian Troup were present at a June 3, 1997 meeting in Upsher-Smith's offices in Plymouth, Minnesota. Upsher-Smith at this time can neither admit nor deny whether Mr. Hirschberg attended the meeting in June 3, 1997, and therefore denies this portion of the request.

*Request No. 13: At a June 3, 1997, meeting at Upsher-Smith's offices in Plymouth, Minnesota, the settlement of the Schering/Upsher-Smith patent litigation was discussed.*

**ANSWER:** Upsher-Smith admits that the Schering/Upsher-Smith patent litigation, among other things, was discussed at a June 3, 1997 meeting at Upsher-Smith's offices in Plymouth, Minnesota.

*Request No. 14: In 1997, Jeffrey Wasserstein was Staff Vice President, Corporate Business Development, in the Corporate Business Development Department of Schering.*

**ANSWER:** Upsher-Smith objects to this Request because the information is necessarily beyond its knowledge. Subject to this objection, Upsher-Smith admits this Request.

*Request No. 15: On June 10, 1997, Jeffrey Wasserstein sent Ian Troup a draft confidentiality agreement in anticipation of a meeting to be held between representatives of Schering and representatives of Upsher-Smith.*

**ANSWER:** Upsher-Smith objects to and denies this Request as the expression, “in anticipation of a meeting” is vague and ambiguous and not defined. Upsher-Smith also objects because “representatives” has not been defined, is vague and ambiguous, and can have various meanings. Upsher-Smith admits only that it received a signed confidentiality agreement from Jeffrey Wasserstein on or about June 10, 1997.

*Request No. 16: In 1997, John Hoffman was Staff Vice President and Associate General Counsel of Schering.*

**ANSWER:** Upsher-Smith objects to this Request because the information is necessarily beyond its knowledge. Subject to this objection, Upsher-Smith admits this Request.

*Request No. 17: On Thursday, June 12, 1997, representatives of Schering and Upsher-Smith met at a conference room at Schering's facilities in Kenilworth, New Jersey.*

**ANSWER:** Admitted.

*Request No. 18: Nick Cannella, a lawyer with the firm Fitzpatrick, Cella, represented Upsher-Smith in the Schering/Upsher-Smith patent litigation.*

**Answer:** Denied. Upsher-Smith admits that it retained Fitzpatrick, Cella to represent it during the patent litigation, but Mr. Cannella did not actively represent Upsher-Smith during the Schering/Upsher-Smith patent litigation.

*Request No. 19: Ian Troup, Andrew Hirschberg, Nick Canella, Raman Kapur, John Hoffman, and Jeffrey Wasserstein were present at a June 12, 1997, meeting at a conference room at Schering's facilities in Kenilworth, New Jersey.*

**ANSWER:** Admitted.

*Request No. 20: At a June 12, 1997, meeting at a conference room at Schering's facilities in Kenilworth, New Jersey, the settlement of the Schering/Upsher-Smith patent litigation was discussed.*

**ANSWER:** Upsher-Smith admits that at the June 12, 1997 meeting resolving the disputes arising out of the Schering/Upsher-Smith patent litigation.

*Request No. 21: Niacor-SR is the trade name of a sustained release niacin product that Upsher-Smith had under development in June of 1997.*

**ANSWER:** Upsher-Smith objects to this Request because the term "under development" has not been defined, and is vague and ambiguous. Subject to that objection, this Request is admitted.

*Request No. 22: Representatives of Upsher-Smith brought information on Niacor-SR, to a June 12, 1997 meeting at a conference room at Schering's facilities in Kenilworth, New Jersey.*

**ANSWER:** Insofar as Ian Troup was present at the meeting, and was knowledgeable of information on Niacor SR, Upsher-Smith admits this request. Upsher-Smith is unable to admit or deny at this time whether Ian Troup or any Upsher-Smith representative brought documents concerning Niacor-SR with to the June 12, 1997 meeting.

*Request No. 23: In 1997, Paul Thompson was an attorney employed in the Schering Legal Department.*

**ANSWER:** Upsher-Smith objects to this Request because the information is necessarily beyond its knowledge. Subject to this objection, Upsher-Smith admits this Request.

*Request No. 24: On Monday, June 16, 1997, representatives of Schering and Upsher-Smith met at Upsher-Smith's headquarters in Plymouth, Minnesota.*

**ANSWER:** Admitted.

*Request No. 25: Ian Troup, Nick Canella, Jeffrey Wasserstein, John Hoffman, Raman Kapur, and Paul Thompson were present at a June 16, 1997, meeting at Upsher-Smith's offices in Plymouth, Minnesota.*

**ANSWER:** Admitted.

*Request No. 26: At a June 16, 1997, meeting at Upsher-Smith's offices in Plymouth, Minnesota, the settlement of the Schering/Upsher-Smith patent litigation was discussed.*

**ANSWER:** Upsher-Smith admits that the Schering/Upsher-Smith patent litigation, among other things, was discussed at a June 16, 1997 meeting at Upsher-Smith's offices in Plymouth, Minnesota.

*Request No. 27: At a June 16, 1997, meeting in Plymouth, Minnesota, representatives of Schering and Upsher-Smith agreed, subject to the approval of the Schering Board of Directors, that Schering would pay Upsher-Smith \$60 million dollars, with additional payments from Schering to Upsher-Smith contingent on the regulatory approvals for Niacor-SR, and additional royalty payments from Schering to Upsher-Smith contingent on Schering making sales of Niacor-SR.*

**ANSWER:** Upsher-Smith objects to this Request because the terms "agreed" and "would pay" have not been defined and are vague and ambiguous. Subject to this objections, this Request is Denied.

*Request No. 28: At a June 16, 1997, meeting in Plymouth, Minnesota, representatives of Schering and Upsher-Smith agreed, subject to the approval of the Schering Board of Directors, that Schering would pay Upsher-Smith \$60 million dollars in a number of installments, but no agreement was reached on the amount of each installment.*

**ANSWER:** Upsher-Smith objects to this Request because the terms “agreed” and “would pay” have not been defined and are vague and ambiguous. Subject to this objections, this Request is denied.

*Request No. 29: After the June 16, 1997, meeting in Plymouth, Minnesota, Jeffery Wasserstein, John Hoffman, and Paul Thompson, returned to their respective offices and continued to work into the night of June 16, 1997, on reaching agreement with Upsher-Smith on settling the Schering/Upsher-Smith patent litigation.*

**ANSWER:** Upsher-Smith objects to this Request because the information is necessarily beyond its knowledge. Subject to this objection, Upsher-Smith admits this Request.

*Request No. 30: During the night of June 16 - June 17, 1997, negotiations continued between representatives of Schering and Upsher-Smith regarding settling the Schering/Upsher-Smith patent litigation.*

**ANSWER:** Denied.

*Request No. 31: Sometime during the night of June 16 - June 17, 1997, contingent on the subsequent approval of the Schering Board of Directors, representatives of Schering and Upsher-Smith agreed that Schering would pay \$60 million in installments to Upsher-Smith and also agreed on the timing and amount of the installments.*

**ANSWER:** Upsher-Smith objects to this Request because the terms “agreed” and “would pay” have not been defined and are vague and ambiguous. Subject to this objections, this Request is denied.

*Request No. 32: In the afternoon of June 17, 1997, District Judge William H. Walls heard oral argument on Schering's and Upsher-Smith's motions for summary judgement in the*



*Schering/Upsher-Smith patent litigation. The trial was scheduled to begin the next day, on June 18, 1997.*

**ANSWER:** Upsher-Smith admits that its motion was argued on the afternoon of June 17, 1997, and admits that trial was to begin the next day on June 18, 1997.

Respectfully Submitted,

Dated: September 12, 2001

Respectfully submitted,

**WHITE & CASE LLP**

By: 

Robert D. Paul

J. Mark Gidley

Christopher M. Curran

Gustav P. Chiarello

601 Thirteenth Street, N.W.

Washington, D.C. 20005-3807

Telephone: (202) 626-3600

Facsimile: (202) 639-9355

*Attorneys for Upsher-Smith Laboratories, Inc.*

### **CERTIFICATE OF SERVICE**

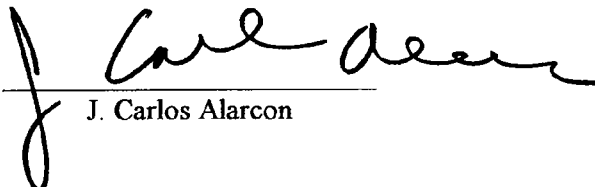
I, J. Carlos Alarcon, hereby certify that on September 12, 2001, I caused a copy of Upsher-Smith's Objections and Responses to Complaint Counsel's Second Set of Requests for Admissions to Upsher-Smith Laboratories, Inc. to be served upon the following persons by courier delivery.

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Karen G. Bokat  
Federal Trade Commission, 3115  
601 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Laura S. Shores  
Howrey Simon Arnold & White  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Cathy Hoffman  
Arnold & Porter  
Thurman Arnold Building  
555 Twelfth Street, N.W.  
Washington, DC 20004-2113



J. Carlos Alarcon